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S. D. THOMPSON, Ass't Editor. }

IN order to include in each number of the JOURNAL a summary of our legal exchanges published the preceeding week, we are obliged to change our day of publication from Thursday to Friday.

GOVERNMENT POLICE ON RAILWAY TRAINS.—The frequent and wholesale robberies which are committed on passenger trains on our great railway lines, are sufficient to direct public attention to the question whether the power does not reside in the general government of establishing a system of national police on inter-state railroads, and whether, if it exists, it ought not to be exerted. If such power does not exist, it is worthy of consideration whether the constitution ought not to be amended so as to confer it. If railroads and telegraphs had existed at the time the constitution was established, there can scarcely be any doubt that the jurisdiction of the federal government would have been extended expressly and fully over these great means of inter-state communication. Shall a citizen of New York or Virginia be liable to be insulted and robbed with impunity while crossing the state of Missouri on a railway train, because the latter state is afflicted with a timid and imbecile state government? The robbery of an entire passenger train on the Iron Mountain Railroad, in Missouri, during the past summer, and recent repetitions of the same thing on passenger trains on the Central Pacific Railroad, in Nevada, information of which the management of that road have endeavored to suppress, call up this question in a forcible manner. The hight point to be insisted upon is, that the citizen *must* have protection against such outrages at the hands of his government, and if the local governments cannot or will not grant it, the general government must.

The Supreme Court of the United States.

This court met on Monday last. All the justices were present, except Mr. Justice Davis and Mr. Justice Bradley. The former remained in Illinois to attend the dedication of the Lincoln monument, and the latter is detained in New York on account of sickness in his family. It is understood that several cases of great importance will come before the court at the present term. Among these are the so-called Granger cases, involving the constitutionality of the Wisconsin railroad law. The opinion of the Supreme Court of Wisconsin in these cases has not yet been published in full, so far as we know. It is of such unusual length that it would occupy thirty-two pages of this journal, set in the smallest type we use. Next, if not superior in importance to these, is the Louisiana Grant Parish case. It will be recollected that several convictions were had last summer, in the United States Circuit Court for the District of Louisiana, under the Kuklux law, of persons implicated in the Grant Parish riots. A motion was made in arrest of judgment, which was argued before Mr. Justice Bradley and Mr. Circuit Judge Woods. These judges differed in opinion, Mr. Justice Bradley delivering a very able and elaborate opinion in favor of arresting the judgment, and Judge Woods dissenting. The case is therefore before the Supreme Court of the United States, on a certificate of division of opinion. Mr. Justice Bradley's opinion will be found in full in the American Law Register, for October, with a commendatory note by Judge Redfield. Another case, scarcely less important than either of the foregoing, is the case of Ah Fong and others, involving the right of a state to prohibit the immigration of lewd and debauched woman, brought over from China for purposes of prostitution. We publish elsewhere an opinion of the Supreme Court of California affirming this right, and an able opinion of Mr. Justice Field, in the Circuit Court of the United States for the District of California, denying it. In view of the fact that large numbers of Asiatics are immigrating to our shores, this case assumes great importance, and interests the people of the inland, as well as those of the seaboard states. A telegram from Washington states that this case will come before the supreme court at the present term.

Naturalization of Aliens—A New Ground of Rejection.

Mr. Chief Justice McKean, of the Supreme Court of Utah Territory, performed an act the other day for which he deserves the thanks of the country. American courts of justice, so far as we know, have never thrown any captious or illegal objections in the way of aliens seeking naturalization as citizens. On the contrary, the duty which the act of Congress imposes upon them of *satisfying themselves* that the applicant "has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well-disposed to the good order and happiness of the same," has never been performed other than in the most formal manner, and generally not at all. But we have at last found a judge who has felt it his duty to exercise this high function more faithfully; and therefore, when Chief Justice McKean rejected a Norwegian named Sandra Sanders, for having the insolence to tell him, in answer to an interrogation, that he (Sanders) knew of no *constitutional* law against polygamy, he performed an act as to which all the people (except the Saints of Utah) will say amen. Whilst we admit to our shores and to the privileges of American citizenship, all well disposed foreigners who may come hither from the continent of Europe and from the British Islands,—not grudgingly and suspiciously, and hampered with degrading conditions, as the Emperor Valens received the Goths into the Roman Empire, but with a free and cordial welcome, yet we can dispense with the votes of such as assume to pass upon the constitutionality of our laws in advance of the courts of justice which we have established for that purpose. The opinion of Chief Justice McKean in this case (which we find in the Chicago Legal News) is as follows:

McKean, Ch. J.—The petitioner, a native of Norway, applied to be admitted to citizenship. The constitution (art. 6, sec. 2) provides that "this constitution, and the laws of the United States which shall be made in pursuance thereof, and all the treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land." The statute requires that it shall appear "*to the satisfaction of the court*," that the applicant for citizenship "has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well-disposed to the good order and happiness of the same." 2 Stat. at Large,

153-4. In this territory, therefore, where disobedience to federal authority is taught as a, so-called, religious duty, this court deems it an imperative duty to subject applicants for naturalization to a more rigid examination than would be necessary under other circumstances. The petitioner, Sanders, was therefore interrogated touching his obedience to the law against polygamy, and, with a manner bordering upon insolence, he replied: "I don't know any constitutional law against polygamy!" Here is an alien who comes from a country where polygamists are summarily and severely punished, who asks for the high privilege of American citizenship, and has the effrontery to deny, in the same breath, the constitutionality of one of the fundamental laws of all Christian civilization. He should be but to happy too be permitted to go at large in this country. His petition is rejected.

Lawyers' Assurance Associations.

The Nashville Commercial Reporter, in its department devoted to legal matters, has an editorial under the above caption, which contains the following sugestions:

Why it is the legal profession in the United States do not organize an assurance association as a means of protection to their families, in case of death, we cannot understand. Certainly no class of men need such an institution more than lawyers.

Generally they are poor, and when they die, leave their families in indigent circumstances, and by such an association they could be assured that their families would be protected against absolute want. As a rule, lawyers are extravagant; they live high, and spend all their income on their families. Their wives and daughters move in the best circles of society, and to enable them to do so, it requires all the money a lucrative practice will provide. There is too little care for the future. "Let every day provide for itself," is the adage; and so while health, strength and life lasts, the wife and family are well-fed, well-clothed, and well provided for; the sons and daughters are educated generally at the best schools the country affords; but there is not a cent laid away for a rainy day or hard times, and when death comes and he is torn from his family, and no provision has been made, they are truly distressed. Accustomed to have every want gratified, and thus suddenly penniless, not only mortifies pride, but it brings absolute want and distress.

There ought to be some remedy provided against such a state of things, and we have long thought a remedy would be provided. Suppose an association composed exclusively of lawyers was formed with 1,000 members, and each member was required to pay three or five dollars into the treasury every time a member died; would not this leave a sum sufficient to protect the family from immediate want, and, indeed, be sufficient, with such help as they could give themselves in ordinary cases, to make them comfortable. Such associations have been formed and successfully carried out by various classes, as locomotive engineers and railway conductors, and it has proven a blessing to many a poor man's family.

Of course the officers should get no salaries, and should hold their offices for a term, and then be exempt from the duties of the office ever afterwards. The expenses of the association would be small, only sufficient money would be required to get books to keep a record of the association, and stationery and postage to enable the secretary to keep in communication with all the members.

No man ought to be received into the association who is nnder twenty-one or over sixty years of age, and who is not in good standing with the profession and in good health; if any member failed to pay his dues after thirty to sixty day's notice, he should forfeit his membership, and he should not be reinstated, except in case he paid all his dues unpaid at the time of his application to be re-instated, and then only by the consent of a majority of the members of the association.

We earnestly second the foregoing suggestions. Whilst nearly every other avocation, trade or guild has its protective or benevolent union, the members of that profession which leads all others in its importance, seem to have entirely neglected such an arrangement, for what reason we cannot understand. The necessity for it is apparent everywhere. In every large city there are widows of able lawers and judges who have lived in affluence and in the highest circles of society, and who have been reduced by the death of their husbands to extreme want. Some of them are keeping boarding-houses, and some are pursuing even more onerous means of obtaining a livelihood. Their children in the meantime receive the cold shoulder from their former associates, and feel in this way the hand of poverty laid on them with cruel weight. Again, there are among us broken-down lawyers and judges who subsist in part, at least, by the precarious alms which they may be able to levy here and there upon their more fortunate brethern. The existence of these things is a standing reproach to the profession.

It may be said that a provident attorney may, like any other person, provide against the recurrence of these evils by keeping in force a policy in a safe life insurance company. But this is only a partial preventive, and besides it has serious disadvantages. In the first place, these associations pay such large commissions to agents, such large salaries to officers, expend so much in advertising, and, as there is reason to believe, in many cases *steal* so much, that life insurance in ordinary companies costs vastly more than as it is actually worth. Besides, lawyers are, it is believed, as a general rule, a long lived class; their lives are singularly free from the accidents which attend many other occupations; and this affords a conclusive reason why they should not pay the high rates of insurance, necessary in an association whose risks cover all classes and occupations. Furthermore, the schemes of life assurance associations do not embrace all the objects of such an association as we have in view. A lawyers' assurance society should not only pay over to the family of each member a round sum on the happening of his death, but it should (if need be) support him in sickness, and pension him in old age. We earnestly ask the attention of our readers to this subject.

Power of a State to Exclude Foreigners From its Limits, and to Prevent Their Landing, on Account of the Immorality of their Past Lives.

I. IN THE MATTER OF AH FOOK *et al.*

Supreme Court of California, September 7, 1874.

Present, Hon. WILLIAM T. WALLACE, Chief Justice.
" JOSEPH B. CROCKETT, } Judges.
" ADDISON C. NILES, }
" E. W. MCKINSTRY, }

Police Power of the States over Chinese Immigration—Burlingame Treaty—Fourteenth Amendment.—A state has power by law to exclude from its shores immigrants who fall within the designation of lewd, debauched or abandoned women. Such a law is not repugnant to the treaty of July 28, 1868, between the United States and China, by which the United States guarantee to "Chinese subjects visiting or residing in the United States," "the same privileges, immunities and exemptions, in respect to travel or residence, as may be enjoyed by the citizens or subjects of the most favored nation;" nor is it in conflict with that provision of the 14th amendment of the federal constitution, which provides that "no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." [*Contra*, next case.]

Opinion by MCKINSTRY, J.—WALLACE, C. J., CROCKETT, and NILES, JJ., concurring.

In response to the writ to him directed, the master of the steamship Japan returns that, on the arrival of the ship in the harbor of San Francisco, she was boarded by the commissioner of immigration, who examined the persons named in the writ—who are Chinese women and were passengers—and, on such examination, declared them to be lewd, debauched and abandoned women, and thereupon refused to permit them to land.

The commissioner justifies by reference to section seventy of amendments to the political code.

Whatever the grammatical errors found in the section, we think the meaning of the legislature is made sufficiently apparent by the language employed.

It is made the duty of the commissioner to satisfy himself that passengers are or are not included in any of the classes specified

in the statute, and to prevent from landing those by him determined to belong to such classes, unless the master, owner or consignee of the vessel shall give the bond mentioned.

On the argument it was admitted that the statute—thus construed—is valid and effective, unless— 1. It contravenes the stipulations of the treaty between the United States and the empire of China, concluded at Washington on the 28th of July, 1868, and commonly cited as the "Burlingame Treaty;" or unless—2. It is in conflict with that portion of the fourteenth amendment of the constitution of the United States which provides that no state "shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

1. The only portion of the treaty which can be supposed to limit the power of state legislation upon the subject, is the sixth article. This article (in language similar to that which will be found perhaps in every original treaty between the United States and a foreign power), provides: "Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities and exemptions, in respect to travel or residence, as may be enjoyed by the citizens or subjects of the *most favored nation*."

If, in the exercise of its power, the state can exclude the persons mentioned in the statute, or require on their behalf security that they will not become a public charge, the treaty is not violated; since the act of the legislature, by its terms, applies to all passengers arriving from foreign ports, and is not made applicable to Chinese subjects alone. Whether the power to exclude resides in the federal or state government, the treaty is not contravened unless a discrimination is made against the subjects of the Ta-Tsing Empire.

The language of the treaty does not compel us to hold that such legislation as that complained of was intended to be prohibited; assuming, for the purposes of this case, that it could be prohibited by treaty. The subjects of China "visiting or residing in the United States," or those traveling for instruction, or from curiosity, or engaging in some legitimate avocation, and whose ingress may not lawfully be prohibited by reason of some objection *personal to themselves*, and not dependent upon their nationality. Otherwise, we should be prohibited from excluding criminals or paupers—a power recognized by all the writers as existing in every independent state. We can but think, that to give to the general language of the treaty a construction which would deprive both the state and the United States government of this power of self-protection, would be a departure from the evident meaning and purpose of the high contracting parties.

2. The question of the power of the legislature to authorize the commissioner of immigration to determine whether particular individuals come within the prohibitions of the statute, is not essentially affected by the fourteenth amendment. A clause, substantially the same as that contained in the amendment, is found in the constitution of California, and in the constitutions of all of the several states. It is a distinct provision from that which protects the right of trial by jury, and is usually declared as an alternative, as in *Magna Charta*—"*Nisi per legale judicium parium, suorum, vel per legem terrae.*" It would be difficult, perhaps impossible, to find in the reports a definition of the terms "law of the land," or "due process of law," which is accurate, complete and appropriate under all circumstances. The peculiar necessities which call for the action of an officer, and whether a power was exercised in the same manner prior to the adoption of the constitution, without being regarded a violation of the principles of *Magna Charta*, may be considered; and if it be found that like proceedings have always been recognized as constitutional in England and this country, and if the person who is subjected to them is accorded every reasonable opportunity to defend his individual rights which the nature of the case will admit—the case being one in which the end sought to be attained is lawful—a statute cannot be said to deprive a party of the benefits of due process of law.

Mr. Justice Cooley (Cons. Lim. 356), says: "Due process of law in each particular case means such an exertion of the powers of governments as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs."

It is obvious that, to render effectual an enquiry which has for its purpose the carrying into operation of quarantine or health laws, must be prompt and summary, and we are not aware that any reasonable provisions of a statute clothing such officers or boards with the enlarged powers often exercised by them, has ever been held unconstitutional.

If the power to exclude such persons as are named in the seventieth section of the amendments to the political code exists at all, it is of the same nature as the power which isolates those ill of contagious diseases, or those who have been in contact with such, or the power to prohibit the introduction of criminals or paupers. These powers are employed, not to punish for offences committed within our borders, but to prevent the entrance of elements dangerous to the health and moral well-being of the community. If the power is to be exercised so as to accomplish the object sought to be attained, those coming here must be met at the threshhold by some official authorized to determine whether any of them belong to the classes who are not entitled to enter unconditionally. The law appoints the commissioner of immigration to that duty, and we cannot see why his judgment should not be decisive.

But whether his determination of the question of fact is or is not conclusive, the evidence satisfies us that in the present cases it was correct.

These persons must be remanded. Counsel will prepare their proper order. PETITIONERS REMANDED.

II. IN THE MATTER OF AH FONG.

In the United States Circuit Court, District of California, September 27, 1874.

Before Hon STEPHEN J. FIELD, one of the Justices of the Supreme Court of the United States; Hon. LORENZO SAWYER, Circuit Judge, and Hon. OGDEN HOFFMAN, District Judge.

1. **Regulation of Immigration— Police Power of State.**—The police power of the state may be exercised by precautionary measures against the increase of crime or pauperism, or the spread of infectious diseases from persons coming from other countries. The state may entirely exclude convicts, lepers and persons afflicted with incurable disease; may refuse admission to paupers, idiots and lunatics and others, who from physical causes are likely to become a charge upon the public, until security is afforded that they will not become such a charge; and may isolate the temporarily diseased until the danger of contagion is gone.

2. ——. **Limitation of Power.**—The extent of the power of the state to exclude a foreigner from its territory is limited by the right of self-defense. Whatever, outside of the legitimate exercise of this right, affects the intercourse of foreigners with our people, their immigration to this country and residence therein is exclusively within the jurisdiction of the general government and is not subject to state control or interference.

3. ——. **Chinese Immigration—Burlingame Treaty.**—The 6th article of the treaty between the United States and China, adopted on the 28th of July, 1868, provides that Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities and exemptions in respect to travel or residence as may there be enjoyed by citizens or subjects of the most favored nation; and as the general government has not seen fit to attach any limitation to the ingress into the United States of subjects of those nations, none can be applied to the subjects of China. [Contra, preceding case.]

4. ——. **Fourteenth Amendment—Right of Aliens to Equal Protection of the Laws.**—The fourteenth ammendment to the constitution declares that no state shall deprive *any person* of life, liberty, or property, without due process of law; nor deny to *any person* the equal protection of the laws; *Held*, that this equality of protection implies not only equal accessibility to the courts for the prevention or redress of wrongs, and the enforcement of rights, but equal exemption with others of the same class, from all charges and burdens of every kind. Within these limits the power of the state exists, as it did previously to the adoption of the amendment, over all matters of internal police. [Contra, preceding case.]

5. ——. ——. ——. **Construction of § 16 of Enforcement Act.**—On the 31st of May, 1870, Congress passed an act declaring that "no tax or charge shall be imposed or enforced by any state upon any person immigrating thereto from a foreign

country, which is not equally imposed or enforced upon every person immigrating to such state from any other foreign country, and any law of any state in conflict with this provision is hereby declared null and void." *Held*—

1st. That the term *charge*, as here used, means any onerous condition, and includes a condition which makes the right of an immigrant, arriving in the ports of the state, to land within the state, depend upon the execution of a bond by the third party, not under its control, and whom he cannot constrain by any legal proceedings; and,

2d. That the statute of California, which prohibits foreign immigrants of certain classes arriving in the State of California by vessel, from landing until a bond shall have been given by the master, owner or consignee of the vessel that they will not become a public charge, and imposes no condition upon immigrants of the same class entering the state in any other way, is in conflict with the act of Congress.

Opinion of Mr. Justice FIELD.—The petitioner alleges that she is illegally restrained of her liberty by the coroner of the city and county of San Francisco, and asks to be discharged from such restraint. The facts of the case, as detailed in the proceedings before us, are briefly as follows: The petitioner is a subject of the empire of China, and came to the port of San Francisco as a passenger on board of the American steamship Japan, owned by the Pacific Mail Steamship Company, and under the command as master, of J. H. Freeman. On the arrival of the steamship at this port, which was on the 24th of August last, she was boarded by the commissioner of immigration of California, who proceeded under the provisions of a statute of the state, to examine into the character of the petitioner and other alien passengers. Upon such examination, the commissioner found, and so declared, that the petitioner and twenty-one other persons, also subjects of the empire of China, arriving as passengers by the same steamship, were lewd and debauched women. He thereupon prohibited the master of the steamship from landing the women, unless he or the owner or consignee of the vessel gave the bonds required by the statute. Neither of the parties designated would consent to give the required bonds, and the women were consequently detained by the master on board of the steamship. They thereupon applied for a writ of *habeas corpus* to a district court of the state to enquire into the cause of their detention, alleging in their petition its illegality, on the ground that the statute, under which they were held, was in contravention of the treaty between the United States and the empire of China, and in conflict with the constitution of the United States, and denying, also, that they were either lewd or debauched women. The district court granted the application and heard the petitioners, and after the hearing, remanded them back to the charge of the master of the steamship, holding that the statute of California was neither in violation of the treaty nor the constitution, and that the evidence presented justified the finding of the commissioner, that the petitioners were lewd and debauched women. The petitioners thereupon applied to the chief justice of the state for another writ of *habeas corpus*, alleging the illegality of their restraint, on grounds similar to those taken in the petition to the district court, and also alleging that they were, since the order of the district court remanding them to the custody of the master of the steamship, about to be forcibly returned to China against their will and consent. They therefore prayed that, with the writ of *habeas corpus*, a warrant might issue to the sheriff of the city and county of San Francisco to take them into his custody. The chief justice granted the writ, returnable before the supreme court of the state, and at the same time issued a warrant commanding the coroner of the city and county to take the parties into his custody, and bring them before the court.

Under this warrant the parties were taken into the custody of the coroner, and in his custody they still remain. The supreme court sustained the ruling of the district court, and denied the application of the parties to be discharged, holding that the statute of the state, under which they were detained, was valid and binding under the treaty between the United States and China, and the constitution of the United States, and that the evidence justified the finding of the commissioner of immigration as to the character of the women. It therefore made an order directing that the coroner return the parties to the master, or owner or consignee of the steamship Japan, on board of the steamship, and requiring such master, owner or consignee to retain the parties on board of the steamship until she should leave this port, and then to carry them beyond the state.

The order further provided, that in case the steamship Japan was not in the port of San Francisco, the coroner should retain the parties in his possession until the arrival in port of the steamship, and then enforce the order returning the parties to the vessel, or retain the parties until the further direction of the court.

The petitioner is one of the women thus held by the coroner, and she now invokes the aid of this court to be released from her restraint, alleging, as in the other applications, that the restraint is illegal, that the statute which is supposed to authorize it is in contravention of the treaty with China and the constitution of the United States, and averring that she is not within either of the classes designated in the statute. It further appears, from the special traverse to the return of the coroner, and it is admitted by counsel, that since the judgment of the supreme court, the steamship Japan has sailed from the port of San Francisco, and will not probably return under three months, and that Freeman has been discharged from the service of the steamship company, and is no longer master of the Japan.

The decision of the district court, and of the supreme court of the state, although entitled to great respect and consideration from the acknowledged ability and learning of their judges, is not binding upon this court. The petitioner being an alien, and a subject of a country having treaty relations with the government of the United States, has a right to invoke the aid of the federal tribunals for her protection, when her rights, guaranteed by the treaty, or the constitution, or any law of Congress, are in any respect invaded; and is, of course, entitled to a hearing upon any allegation, in proper form, that her rights are thus invaded.

I proceed, therefore, to the consideration of the questions presented, notwithstanding the adjudications of the state tribunals.

The statute of the state, under which the petitioner was restrained of her liberty on board of the steamship, is found in the provisions of chapter one, title seven of the political code, as amended by the last legislature. These provisions require the master of a vessel arriving at any port of this state, bringing passengers from any place out of the state, within twenty-four hours after its arrival, to make a written report, under oath, to the commissioner of immigration at such port, stating, among other things, the name, place of birth, last residence, age and occupation of all passengers who are not citizens, and whether any of the passengers thus reported are "lunatic, idiotic, deaf, dumb, blind, crippled or infirm, and not accompanied by any relatives able to support them, or are lewd or abandoned women." Then follow the special provisions which have given rise to the present proceeding. They are contained in section 2952 of the code as amended. They require the commissioner of immigration "to satisfy himself whether or not any passenger who shall arrive in this state by vessels from any foreign port or place (who is not a citizen of the United States), is lunatic, idiotic, deaf, dumb, blind, crippled or infirm, and is not accompanied by relatives who are able and willing to support him, or is likely to become permanently a public charge, or has been a pauper in any other country, or is, from sickness or disease, existing either at the time of sailing from the port of departure, or at the time of his arrival in this state, a public charge, or likely to become so, or is a convicted criminal, or a lewd or debauched woman;" and then declare that "no person who shall belong to either class, or who possesses any of the infirmities or vices specified herein, shall be permitted to land in this state, unless the master, owner or consignee of said vessel shall give a joint and several bond to the people of the state of California, in the penal sum of five hundred dollars in gold coin of the United States, conditioned to indemnify and save harmless every county, city and county, town and city of this state, against all costs and ex-

penses which may be by them necessarily incurred for the relief, support, medical care, or any expense whatever, resulting from the infirmities or vices herein referred to, of the persons named in said bonds, within two years from the date of said bonds; * * and if the master, owner or consignee of said vessel shall fail or refuse to execute the bond herein required to be executed, they are required to retain such persons on board of said vessel until said vessel shall leave the port, and then convey said passengers from this state; and if said master, owner or consignee shall fail or refuse to perform the duty and service last herein enjoined, or shall permit said passengers to escape from said vessel and land in this state, they shall forfeit to the state the sum of five hundred dollars in gold coin of the United States, for each passenger so escaped, to be recovered by suit at law."

The provisions of this section are of a very extraordinary character. They make no distinction between the deaf, the dumb, the blind, the crippled and the infirm, who are poor and dependent, and those who are able to support themselves and are in possession of wealth and all its appliances. If they are not accompanied by relatives, both able and willing to support them, they are prohibited from landing within the state, unless a specified bond is given, not by them or such competent sureties as they may obtain, but by the owner, master or consignee of the vessel. Neither do the provisions of the statute make any distinction between a present pauper and one who has been a pauper, but has ceased to be such. If the emigrant has ever been within that unfortunate class, notwithstanding he may have at the time ample means at his command, he must obtain the designated bond or be excluded from the state. They subject also to the same condition, and possible exclusion, the passenger whose sickness or disease has been contracted on the passage, as well as the passenger who was sick or diseased on his departure from the foreign port. It matters not that the sickness may have been produced by exertions for the safety of the ship or passengers, or by attentions to their wants or health. If he is likely on his arrival to become a public charge, he must obtain the bond designated, or be denied a landing within the state. Nor does the statute make any distinction between the criminal convicted for a misdemeanor, or a felony, or for an offense *malum in se*, or one political in its character. The condemned patriot, escaping from his prison and fleeing to our shores, stands under the law upon the same footing with the common felon who is a fugitive from justice. Nor is there any difference made between the woman whose lewdness consists in private unlawful indulgence, and the woman who publicly prostitutes her person for hire, or between the woman debauched by intemperance in food or drink, or debauched by the loss of her chastity.

A statute thus sweeping in its terms, confounding by general designation persons widely variant in character, is not entitled to any very high consideration. If it can be sustained as the exercise of the police power of the state as to any persons brought within any of the classes designated, it must be sustained as to all the persons of such class. That is to say, if it can be sustained when applied to the infirm, who is poor and dependent, when unaccompanied by his relatives, able and willing to support him, it must be sustained when applied to the infirm who is surrounded by wealth and its attendants, if he is thus unaccompanied. If it can be sustained when applied to a woman whose debauchery consists in the prostitution of her person, it must be sustained when applied to a woman whose debauchery consists in her intemperance in food and drink; and even when applied to the repentant Magdalen, who has once yielded to temptation and lost her virtue. The commissioner of immigration is not empowered to make any distinction between persons of the same class; and there is nothing on the face of the act which indicates that the legislature intended that any distinction should be made.

It is undoubtedly true that the police power of the state extends to all matters relating to the internal government of the state, and the administration of its laws, which have not been surrendered to the general government, and embraces regulations affecting the health, good order, morals, peace and safety of society. Under this power all sorts of restrictions and burdens may be imposed, having for their object the advancement of the welfare of the people of the state, and when these are not in conflict with established principles, or any constitutional probibition, their validity cannot be questioned.

It is equally true that the police power of the state may be exercised by precautionary measures against the increase of crime or pauperism, or the spread of infectious diseases from persons coming from other countries; that the state may entirely exclude convicts, lepers and persons afflicted with incurable disease; may refuse admission to paupers, idiots, lunatics and others, who, from physical causes are likely to become a charge upon the public, until security is afforded that they will not become such a charge; and may isolate the temporarily diseased until the danger of contagion is gone. The legality of precautionary measures of this kind has never been doubted. The right of the state in this respect has its foundation, as observed by Mr. Justice Grier in the Passenger Cases, in the sacred law of self-defence, which no power granted to Congress can restrain or annul.

But the extent of the power of the state to exclude a foreigner from its territory is limited by the right in which it has its origin, the right of self-defense. Whatever, outside of the legitimate exercise of this right, affects the intercourse of foreigners with our people, their immigration to this country and residence therein is exclusively within the jurisdiction of the general government, and is not subject to state control or interference. To that government the treaty-making power is confided; also, the power to regulate commerce with foreign nations, which includes intercourse with them as well as traffic; also the power to prescribe the conditions of migration or importation of persons, and rules of naturalization; whilst the states are forbidden to enter into any treaty, alliance or confederation with other nations.

I am aware that the right of the state to exclude from its limits any persons whom it may deem dangerous or injurious to the interests and welfare of its citizens, has been asserted by eminent judges of the Supreme Court of the United States. Mr. Chief Justice Taney maintained the existence of this right in his dissenting opinion in the Passenger Cases, and asserted that the power had been recognized in previous decisions of the court. The language of the opinion in the case of the city of New York v. Miln (11 Peters, 141), would seem to sustain this doctrine, But neither in the Passenger Cases, nor in the case of the city of New York v. Miln, did the decision of the court require any consideration of the power of exclusion, which the state possessed; and all that was said by the eminent judges in those cases upon that subject, was argumentative and not necessary and authoritative.*

*The only point involved and decided in the case of the City of New York v. Miln (11 Pet. 102), was the constitutional power of the State of New York to compel the master of a vessel, with passengers, arriving at her ports, from any country out of the United States, or from any other state of the United States, to report in writing, on oath, to the state authorities, under a prescribed penalty, the name, place of birth, and the last legal settlement, age and occupation of every person brought as a passenger in the vessel. This the supreme court held that the state, in virtue of her general police powers, had the constitutional right to do. In the course of the opinions of Mr. Justice Barbour and Mr. Justice Thompson, general language is used indicating a power in the state to exclude persons from her limits whom she might deem dangerous to the material or moral welfare of the state, but the language was wholly unnecessary to the decision of the only point then in judgment before the court.

The facts of the two cases known as the Passenger Cases (7 How. 283), were briefly these: One of the cases (Smith v. Turner) went to the supreme court, on a writ of error from the Court of Errors of New York. The other case (Morris v. The City of Boston), went to the Supreme Court of the United States from the Supreme Court of Massachusetts. The New York case arose substantially upon these facts:

A statute of that state authorized the health commissioner to demand and

But independent of this consideration, we cannot shut our eyes to the fact that much which was formerly said upon the power of the state in this respect, grew out of the necessity which the Southern states, in which the institution of slavery existed, felt, of excluding free negroes from their limits. As in some states negroes were citizens, the right to exclude them from the slave states could only be maintained by the assertion of a power to exclude all persons whom they might deem dangerous or injurious to their interests. But at this day no such power would be asserted, or if asserted, allowed in any federal court. And the most serious consequences affecting the relations of the nation with other countries, might and undoubtedly would, follow from any attempt at its exercise. Its maintenance would enable any state to involve the nation in war, however disposed to peace the people at large might be.

Where the evil apprehended by the state from the ingress of foreigners is that such foreigners will disregard the laws of the state, and thus be injurious to its peace, the remedy lies in the more vigorous enforcement of the laws, not in the exclusion of the parties. Gambling is considered by most states to be injurious to the morals of their people, and is made a public offence. It would hardly be considered as a legitimate exercise of the police power of the state to prevent a foreigner, who had been a gambler in his own country, from landing in ours. If, after landing, he pursues his former occupation, fine him, and if he persists in it, imprison him, and the evil will be remedied. In some states the manufacture and sale of spirituous and intoxicating liquors are forbidden and punished as a misdemeanor. If the foreigner coming to our shores is a manufacturer or dealer in such liquors, it would be deemed an illegitimate exercise of the police power to exclude him, on account of his calling, from the state. The remedy against any apprehended manufacture and sale would lie in such case in the enforcement of the penal laws of the state. So, if lewd women, or lewd men, even if the latter be of that baser sort, who, when Paul preached at Thessalonica, set all the city in an uproar (Acts xvii, verse 5), land on our shores, the remedy must be found in good laws, or good municipal regulations and a vigorous police.

It is evident that if the possible violation of the laws of the state by an emigrant, or the supposed immorality of his past life or profession, where that immorality has not already resulted in a conviction for a felony, is to determine his right to land and to reside in the state, or to pass through into other and interior states, a door will be opened to all sorts of oppression. The doctrine now asserted by counsel for the commissioner of immigration, if maintained, would certainly be invoked, and at no distant day, when other parties, besides low and despised Chinese women, are the subjects of its application, and would then be seen to be a grievous departure from principle.

I am aware of the very general feeling prevailing in this state against the Chinese, and in opposition to the extension of any encouragement to their immigration hither. It is felt that the dissimilarity in physical characteristics, in language, in manners, religion and habits, will always prevent any possible assimilation of them with our people. Admitting that there is ground for this feeling, it does not justify any legislation for their exclusion, which might not be adopted against the inhabitants of the most favored nations of the Caucasian race, and of Christian faith. If their further immigration is to be stopped, recourse must be had to the federal government, where the whole power over this subject lies. The state cannot exclude them arbitrarily, nor accomplish the same end by attributing to them a possible violation of its municipal laws. It is certainly desirable that all lewdness, especially when it takes the form of prostitution, should be suppressed, and that the most stringent measures to accomplish that end should be adopted. But I have little respect for that discriminating virtue which is shocked when a frail child of China is landed on our shores, and yet allows the bedizened and painted harlot of other countries to parade our streets and open her hells in broad day, without molestation and without censure.

By the 5th article of the treaty between the United States and China, adopted on the 28th of July, 1868, the United States and the Emperor of China recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively from the one country to another, for purposes of curiosity, of trade, or as permanent residents. The 6th article declares that citizens of the United States, visiting or residing in China, shall enjoy the same privileges, immunities or exemptions in respect to travel or residence as may there be enjoyed by citizens or subjects of the most favored nation. And, reciprocally, that Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities and exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation.

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receive, and in case of neglect or rufusal to pay, to sue for and recover from master of every vessel arriving in the port of New York from a foreign port, for himself and each cabin passenger, one dollar and fifty cents, and from the master of each coasting vessel for each person on board, twenty-five cents; but coasting vessels from New Jersey, Connecticut and Rhode Island, were only required to pay for one voyage in each month.

The moneys thus collected were denominated in the statute, hospital moneys, and the master was authorized to sue and recover from each passenger the amount paid on his account. To the failure on the part of the master to pay within twenty-four hours after arrival of the vessel, was attached a penalty of one hundred dollars. All moneys collected from this source, in excess of the amount necessary to defray the hospital expenses, were to be paid over to the treasurer of the Society for the Reformation of Juvenile Delinquents, in the City of New York.

Upon this statute, Smith, the master of the British ship Henry Bliss, was sued for $295. He demurred to the complaint, on the ground that so much of the statute as authorized a recovery, was rupugnant to the constitution of the United States. The demurrer was overruled in the state courts, and electing to stand upon the demurrer, the case was taken to the Supreme Court of the United States, where the point was thus sharply presented to the court for decision. That tribunal, after the most exhaustive and elaborate arguments upon the question, decided that the act of the legislature of New York, in the particular case under consideration, was repugnant to the constitution of the United States, and void, and accordingly reversed the judgment of the Court of Errors of New York.

In the case of Norris v. The City of Boston, the facts were substantially as follows: Norris, an inhabitant of St. John's, in the Province of New Brunswick, Kingdom of Great Britain, was master of a vessel belonging to the port of St. John's; he arrived with nineteen alien passengers at the port of Boston. Prior to landing, he was compelled to pay, under a law of Massachsetts, to the city of Boston, two dollars for each passenger.

The statute of Massachusetts authorized the municipal authorities to appoint examiners, whose duty it was to examine the condition of all passengers on board of any vessel arriving in port. If, upon such examination, there were found among said passengers "any lunatic, idiot, maimed, aged or infirm person," incompetent, in the opinion of the examining officer, to maintain himself, or who had been a pauper in another country, the passenger was not permitted to land until the master, owner, consignee or agent of the vessel gave to the city a bond in the sum of one thousand dollars, with sufficient sureties, that such lunatic, or indigent passenger would not become a city, town or state charge within ten years from the date of the bond; and for all alien passengers, other than those already specified, the master was required to pay two dollars for each passenger before they could land. Appropriate penalties were contained in the statute to secure compliance with its terms. Norris paid the two dollars for each passenger, as prescribed by the statute, under protest, landed his passengers, and thereupon instituted suit for the recovery of the money he had thus been compelled to pay. In the state courts judgment passed in favor of the defendant, when the case was taken to the Supreme Court of the United States, upon a writ of error, where the judgment was reversed; that court holding that the statute of Massachussetts, under which payment of the money was compelled, was unconstitutional and void.

In the opinions of the justices in these celebrated cases, language is also used as in the case in 11th Peters, expressive of the right of the state in exercise of its police power, to exclude persons from her limits, but from the statement of be cases, it is obvious that no such question was before the court. *See note at end of this opinion.*

The only limitation upon the free ingress into the United States, and egress from them of subjects of China, is the limitation which is applied to citizens or subjects of the most favored nation; and as the general government has not seen fit to attach any limitation to the ingress of subjects of those nations, none can be applied to the subjects of China. And the power of exclusion by the state, as we have already said, extends only to convicts, lepers and persons incurably diseased, and to paupers and persons who, from physical causes, are likely to become a public charge. The detention of the petitioner is therefore unlawful under the treaty.

But there is another view of this case equally conclusive for the discharge of the petitioner, which is founded upon the legislation of Congress since the adoption of the fourteenth amendment. That amendment, in its first section, designates who are citizens of the United States, and then declares that no state shall make or enforce any law which abridges their privileges and immunities. It also enacts that no state shall deprive *any person* (dropping the distinctive designation of citizens) of life, liberty, or property, without due process of law; nor deny to *any person* the equal protection of the laws. The great fundamental rights of all citizens are thus secured against any state deprivation, and all persons, whether native or foreign, high or low, are, whilst within the jurisdiction of the United States, entitled to the equal protection of the laws. Discriminating and partial legislation, favoring particular persons, or against particular persons of the same class, is now prohibited. Equality of privilege is the constitutional right of all citizens, and equality of protection is the constitutional right of all persons. *And equality of protection implies not only equal accessibility to the courts for the prevention or redress of wrongs, and the enforcement of rights, but equal exemption with others of the same class, from all charges and burdens of every kind.* Within these limits the power of the state exists, as it did previously to the adoption of the amendment, over all matters of internal police. And within these limits the act of Congress of May 31st, 1870, restricts the action of the state with respect to foreigners immigating to our country. "No tax or charge," says the act, "shall be imposed or enforced by any state upon any person immigrating thereto from a foreign country, which is not equally imposed or enforced upon every person immigrating to such state from any other foreign country, and any law of any state in conflict with this provision is hereby declared null and void." 16 Statutes at Large, 144.

By the term *charge*, as here used, is meant any onerous condition, it being the evident intention of the act to prevent any such condition from being imposed upon any person immigrating to the country, which is not equally imposed upon all other immigrants, at least upon all others of the same class. It was passed under and accords with the spirit of the fourteenth amendment. A condition which makes the right of the immigrant to land depend upon the execution of a bond by a third party, not under his control and whom he cannot constrain by any legal proceedings, and whose execution of the bond can only be obtained upon such terms as he may exact, is as onerous as any charge which can well be imposed, and must, if valid, generally lead, as in the present case, to the exclusion of the immigrant.

The statute of California, which we have been considering, imposes this onerous condition upon persons of particular classes on their arrival in the ports of the state by vessel, but leaves all other foreigners of the same classes entering the state in any other way, by land from the British possessions or Mexico, or over the plains by railway, exempt from any charge. The statute is therefore in direct conflict with the act of Congress.

It follows, from views thus expressed, that the petitioner must be discharged from further restraint of her liberty; and it is so ordered.

PETITIONER DISCHARGED.

NOTE.—Mr. Justice Wayne, one of the judges composing the majority of the court which decided the Passenger Cases, sums up the conclusions of the court, as follows (7 How. 412):

1. That the acts of New York and Massachussetts imposing a tax upon passengers, either foreigners or citizens, coming into the ports of those states, either in foreign vessels or vessels of the United States, from foreign nations or from ports in the United States, are unconstitutional and void, being in their nature regulations of commerce, contrary to the grant in the constitution to Congress of the power to regulate commerce with foreign nations and among the several states.

2. That the states of this Union cannot constitutionally tax the commerce of the United States for the purpose of paying any expense incident to the execution of their police laws; and that the commerce of the United States includes an intercourse of persons, as well as the importation of merchandise.

3. That the acts of Massachusetts and New York in question in these cases conflict with treaty stipulations existing between the United States and Great Britain, permitting the inhabitants of the two countries "freely and securely to come, with their ships and cargoes, to all places, ports, and rivers in the territories of each country, to which other foreigners are permitted to come, to enter into the same, and to remain and reside in any parts of said territories, respectively; also, to hire and occupy houses and warehouses for the purposes of their commerce, and generally the merchants and traders of each nation, respectively, shall enjoy the most complete protection and security for their commerce, but subject, always, to the laws and statutes of the two countries, respectively;" and that said laws are therefore unconstitutional and void.

4. That the Congress of the United States, having by sundry acts passed at different times, admitted foreigners into the United States, with their personal luggage and tools of trade, free from all duty or imposts, the acts of Massachusetts and New York imposing any tax upon foreigners or immigrants for any purpose whatever, whilst the vesel is in *transitu* to her port of destination, though said vessel may have arrived within the jurisdictional limits of either of the states of Massachusetts or New York, and before the passengers have been landed, are in violation of said acts of Congress, and therefore unconstitutional and void.

5. That the acts of Massachussetts and New York, so far as they impose any obligation upon the owners or consignees of vessels, or upon the captains of vessels, or freighters of the same, arriving in the ports of the United States within the said states, to pay any tax or duty of any kind whatever, or to be in any way responsible for the same, for passengers arriving in the United States or coming from a port in the United States, are unconstitutional and void; being contrary to the constitutional grant to Congress of the power to regulate commerce with foreign nations, and among the several states, and to the legislation of Congeess under the said power, by which the United States have been laid off into collection districts, and ports of entry established within the same, and commercial regulations prescribed, under which vessels, their cargoes and passengers are to be admitted into the ports of the United States, as well from abroad as from other ports of the United States. That the act of New York now in question, so far as it imposes a tax upon passengers arriving in vessels from other ports in the United States, is properly in this case before this court for construction, and that the said tax is unconstitutional and void. That the ninth section of the first article of the constitution includes within it the migration of other persons, as well as the importation of slaves, and in terms recognizes that other persons as well as slaves may be the subjects of importation and commerce.

6. That the fifth clause of the ninth section of the first article of the constitution, which declares that "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another state; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another," is a limitation upon the power of Congress to regulate commerce for the purpose of producing entire commercial equality within the United States, and also a prohibition upon the states to destroy such equality by any legislation prescribing a condition upon which vessels bound from one state shall enter the ports of another state.

7. That the acts of Massachusetts and New York, so far as they impose a tax upon passengers, are unconstitutional and void, because each of them so far conflicts with the first clause of the eighth section of the first article of the constitution, which enjoins that all duties, imposts, and excises shall be uniform throughout the United States; because the constitutional uniformity enjoined in respect to duties and imposts is as real and obligatory upon the states, in the absence of all legislation by Congress, as if the uniformity had been made by the legislation of Congress; and that such constitutional uniformity is interfered with and destroyed by any state imposing any tax upon the intercourse of persons from state to state, or from foreign countries to the United States.

8. That the power in Congress to regulate commerce with foreign nations and among the several states, includes navigation upon the high seas, and in the bays, harbors, lakes, and navigable waters within the United States, and that any tax by a state in any way affecting the right of navigation,

or subjecting the exercise of the right to a condition, is contrary to the aforesaid grant.

9. That the states of this Union may, in the exercise of their police powers, pass quarantine and health laws, interdicting vessels coming from foreign ports, or ports within the United States, from landing passengers and goods, describe the places and time for vessels to quarantine, and impose penalties upon persons for violating the same; and that such laws, though affecting commerce in its transit, are not regulations of commerce prescribing terms upon which merchandise and persons shall be admitted into the ports of the United States, but precautionary regulations to prevent vessels engaged in commerce from introducing disease into the ports to which they are bound, and that the states may, in the exercise of such police power, without any violation of the power in Congress to regulate commerce, exact from the owner or consignee of a quarantined vessel, and from the passengers on board of her, such fees as will pay to the state the cost of their detention and of the purification of the vessel, cargo, and apparel of the persons on board.

Street Railroad Companies — Their Organization under General Railroad Laws — Nature and Extent of their Franchises.

THE ST. LOUIS RAILROAD COMPANY v. THE NORTH-WESTERN ST. LOUIS RAILROAD COMPANY.

Circuit Court of St. Louis County, Mo., September, 1874.

Before Hon. GEORGE A. MADILL, Circuit Judge.

1. **Street-Railroads—Missouri Law of 1855.**—The general railroad law of Missouri of December 13, 1855, authorized the formation of an association for the purpose of constructing and operating a street railroad wholly located within the limits of a municipal corporation; and after its organization vested it with power to construct its railroad upon the public streets of the city, upon obtaining the assent of the municipal authorities.

2. ——. **St. Louis Ordinance of 1859.**—The charter of the city of St, Louis in force in 1859, gave that city power "to open, alter, abolish, widen, extend, establish, grade, repair, or otherwise improve, clean and keep in repair streets, avenues, lanes and alleys;" *held*, that no authority was thereby granted to permit the construction of a horse-railroad upon the streets of the city.

3. ——. **General Law of 1855—Assent of Municipal Corporation.**—But it was held further that the general railroad law of December 13, 1855, requiring the assent of municipal corporations to the construction of a railroad upon the public streets, must be regarded as impliedly giving every such municipal corporation power to give such assent.

4. ——. **Charter—Granting Exclusive Privileges — Amendment of.** — A street railroad was nearly, if not quite, completed by a company formed under the general railroad laws; subsequently an act was passed whereby it was provided that "no street railroad should thereafter be constructed in the city of St. Louis nearer to a parallel road than third parallel street from any road now constructed, or that may hereafter be constructed, except the roads hereinbefore mentioned." *Held*, that this law was an amendment of the charter of said company, and granted a franchise exclusive in its nature, and that it was a contract with the company, the obligation of which could not be impaired.

5. ——. ——. Quære.—As to whether any new consideration was necessary to support such an additional grant by way of amendment.

6. **Legislative Grant—Consideration.**—Held further, that the right granted to the city of St. Louis by said act, to make such municipal regulations concerning said railroad as the public interests might require, was a present consideration for such additional grant.

7. **Charters—Construction of.**—Grants of franchises from the state to a corporation are to be strictly construed, and most favorably to the state; nothing passes except what is expressly named or necessarily implied in the language used in such grants.

8. ——. ——. **Parallel Roads.**—*Held*, that two street-railroads, to be *parallel* in the meaning of the act above quoted, must have substantially the same general direction throughout their entire routes.

Bill in equity to enjoin defendant. The plaintiff was organized in February, 1859, under the general railroad law of Missouri ("an act to authorize the formation of railroad associations, and to regulate the same," approved Dec. 13, 1855, 1 Rev. Stat. Mo., 1855, p. 404), for the purpose of "constructing, maintaining and operating a railroad for the conveyance of persons and property, to be worked by horse-power only," from Bellefontaine Cemetery to the southern boundary of the city of St. Louis, over and along certain streets of said city. Subsequently, by ordinance No. 4371, approved March 10, 1859, and by an amendatory ordinance, No. 4467, approved June 30, 1859, the plaintiff was authorized to construct its road upon the streets at present occupied with its tracks. Its road was at once built, and nearly, if not wholly, completed in the year 1859. By an act of the general assembly, approved January 16, 1860, entitled "an act concerning street-railroads in the city of St. Louis," § 1, the plaintiff (and certain other named companies), as organized under the general railroad law of Dec. 13, 1855, was ratified and confirmed in its rights under said law: its road was built and guage of track was sanctioned; and it was exempted from carrying freight and making a report to the secretary of state, but, in all other respects, was to conform to, and be governed by said law. By § 2 all railroad tracks were forever prohibited from Clark avenue, Chesnut, Pine and Locust streets and Washington avenue; and by § 3 it was declared that "no street-railroad shall hereafter be constructed in the city of St. Louis, nearer to a parallel road than third parallel street from any road now constructed, or which may hereafter be constructed, except the roads hereinbefore mentioned; and in consideration of the privileges herein granted, the city of St. Louis is hereby expressly empowered to impose and levy such tax and license upon said roads, now constructed, or that may hereafter be constructed, as the common council of said city may determine to be just and proper; and the said city may make such municipal regulations, concerning said street-railroads, as the public interest and convenience may require, except to reduce the rate of fare," as fixed by city ordinance. In June, 1874, the defendant was organized under the general laws of Missouri, relating to manufacturing and business companies (1 Wagn. Stat. Mo., p. 332, § 1), for the purpose of constructing, maintaining and operating a railway to be worked by horse-power only, for public use in carrying persons and property within the corporate limits of the city of St. Louis, upon such streets in said city as should be designated for that purpose by the municipal authorities. By an ordinance, No. 8982, approved June 30, 1874, the defendant was authorized by said authorities to construct its road from the corner of Sixth, on Locust, to Ninth street, on Ninth street northwardly to North Spring street, on North Spring street and St. Louis avenue westwardly to Jefferson avenue, thence returning eastwardly on another track on said avenue to Fourteenth street, and southwardly on that street to Christy avenue, thence to Twelfth and Locust streets and eastwardly to the place of beginning. The plaintiff's road extends from the northern limits of the city along Broadway, Fifth streets and Carondelet avenue, all continuous streets, to the southern limits of the city proper, its cars running both north and south on Broadway on separate tracks. Ninth street, between Hempstead and North Spring streets, a distance of about nine blocks, is the first street west of Broadway, "and it is this relative position of these roads, between Hempstead and North Spring streets, which gives rise to this controversy: the plaintiff's claiming that the defendant's road, if allowed to be built on Ninth street, between these two streets, will be an invasion of an exclusive privilege granted the plaintiff by the state in the act of 1860, before referred to, and attended with serious damage and loss to its business."

It is necessary also to mention that, by the charter in force in 1859, the city of St. Louis had power "to open, alter, abolish, widen, extend, establish, grade, pave or otherwise improve, clean and keep in repair streets, avenues, lanes and alleys" (Session Acts 1851, p. 158, § 2, cl. 8), and that said city had no other authority over the streets, until by the act of February 15, 1864 (Sess. Acts 1863-4, p. 446), full power was vested in the city council, "with the approval of the mayor, to determine all questions arising with reference to street railroads in the corporate limits of said city, whether such questions may involve the incorporation of companies to construct such street railroads, granting the right of way or regulating or controlling such railroads after their completion." In each of the city charters, since that time, the city council, with the approval of the mayor, has "sole power and authority to grant to persons or corporations the exclusive right to construct street-railways in the streets of the city, or any of them,

and to regulate and control the same." Sess. Acts 1874, p. 365, cl. 16.

The plaintiff brings this action to restrain the defendant from constructing and operating its road on Ninth street, between Hempstead and North Spring streets. The defendant, by its answer, raised the following issues:

First. That the plaintiff's organization, under the general railroad law of December 13, 1855, was authorized by, and its object beyond the purview of that act.

Second. That the ordinances No. 4371, and No. 4467, by which plaintiff claimed to have been authorized by the city of St. Louis to construct and operate its road, were *ultra vires*, and therefore void.

Third. That the act of January 16, 1860, was ineffectual to ratify or confirm the plaintiff's organization, and in so far as it attempted this, was retrospective, unconstitutional and void.

Fourth. That said act of January 16, 1860, was not a contract with the plaintiff, nor a grant; that no consideration passed to the state; that the act was a general law concerning street-railroads in St. Louis, and was intended for the benefit of the public, and not of the plaintiff and the other designated roads, and that it was consequently repealable.

Fifth. That the act of January 16, 1860, did not grant any *exclusive* franchise to the plaintiff, and if it intended so to do, was a breach of public trust on the part of the general assembly, in attempting to grant to a private corporation for a long period a permanent and exclusive right in five parallel and adjacent streets or public highways, in which the whole community had an absolute right.

Sixth. That the law of January 16, 1860, was repealed by that of February 15, 1864, and the various city charters since that time, vesting in the city council exclusive control of street-railroad matters in St. Louis, in favor of the defendant, upon the approval of ordinance 8982; and also by various other acts of the general assembly granting rights of way to other parties necessarily conflicting with the alleged exclusive right of the plaintiff.

Seventh. That defendant's road was not a parallel road within the meaning and purview of the act of January 16, 1860, to the plaintiff's road.

Eighth. That by the contemporaneous construction placed on the act by the legislature and the city council, and acquiesced in by plaintiff, it was interpreted to be a law concerning, and not for, the benefit of street-railroads.

The case was submitted on the pleadings, and an agreed state of facts.

Messrs. *Glover & Shepley*, for plaintiff; *Jacob Klein* and *Geo. W. Lubke*, with whom were *Samuel Knox* and *Irwin Z. Smith*, for defendants.

Opinion by MADILL, J., the main points of which are stated below.

The questions involved are considered in the order in which they were presented and discussed by counsel.

"When the act of 1855 was approved, there were no *street-railroads*, as now known and understood in this state; in fact, they were comparatively little known in any section of the country. And it may be conceded that the legislature, in framing the provisions of this statute, did not have definitely in mind railroads to be built, equipped and operated for the exclusive purposes in the restricted localities, and with the sole motive power which distinguish the present street-railroad. But the intention of the legislature was to provide a way, which, while it was simple and convenient, should also be general, comprehensive and permanent. * * * Hence the act is found to anticipate and provide for almost every possible contingency, adapting its provisions to the wants of companies organized under it, whether their projected roads were long or short, whether built wholly, chiefly or partially within the limits of municipal corporations, or entirely removed from them, and whether steam or horses were to be the motive power." The state may authorize the construction of a railroad upon the streets of a city. If the "use of them by the company amounts to a destruction of the public easement in them, then compensation must be made to the owner of the land to whom the private use of the land results when the public use as a street ceases. If, however, the use of a street by the company for the uses of its road is consistent with the reasonable use of it also by the public, though it may be in a diminished degree from that originally enjoyed, then there is no appropriation of property in the sense which requires compensation to be made to any one." * * * Moreover, the act of January 16, 1860, "expressly recognizes this company and its enterprise as authorized by the act of 1855, and ratifies and confirms its asserted corporate rights as having been regularly acquired under the statute, and the act of 1860 must be taken as a legislative construction of the act of 1855, which, though never conclusive on courts in controlling their action on questions of this character, is nevertheless entitled to consideration and weight. It follows that plaintiff's incorporation was warranted by the statute of 1855, and that it is vested with the powers and subjected to the conditions therein enumerated.

One of these conditions required the plaintiff to obtain permission from the city authorities to the construction of its road upon the public streets. It is a settled rule that municipal corporations, in the absence of authority either express or necessarily implied, have no power to grant the use of their streets for railroad purposes. The only provision in the city charter which could have been supposed to give validity to the ordinances 4371 and 4467, is set forth above in the statement of facts. A moment's consideration of this language renders it manifest that no power is here delegated to the city authorities which can be invoked to sustain these ordinances. They take the form of grants, prescribing conditions, conveying rights, imposing duties, exempting from obligations, reserving powers, determining regulations, and contracting as to time, which are insignia only of the most plenary legislative powers. Clearly the legislature never intended, by the use of the language above quoted from the charter of the city, to invest the city council with such sweeping right to deal with the public streets.

But for the purposes of this case it is not necessary that all the provisions of these ordinances should be sustained. It is only necessary that the portion giving the consent of the city for the use of the streets, which plaintiff by its charter was required to obtain, shall be found authorized by the legislature; the balance may be treated as *ultra vires*, and therefore void.

By § 29 of the act of December 13, 1855, power is given to every association, formed under the act to construct its road upon the public streets of any city, upon its first obtaining the assent of the corporate authorities of said city. This provision, it must be held, gave said authorities the power to assent to plaintiff's use of the streets for the construction of its road. In addition to this, by § 1 of the act of 1860, the plaintiff's road, as located in the streets, was sanctioned. Hence, whether the "assent" of the city authorities was legally given the year before or not, such assent for the future was unnecessary.

The defendant, however, insists that the act of 1860, in this particular, as well as others, is retrospective and therefore void. But, applying the proper test, and recalling the subject-matter and the relative position of the parties interested, it becomes apparent that the act is not liable to that objection.

Upon the fourth question presented, the learned judge, after defining the nature of a franchise, and the rights and duties arising out of a grant, says: Such are the rights and obligations which the law has assigned to the respective parties of a contract of this character, and to which adverse opinion, whether individual or public, and however plausible, must yield until the rule is changed by the federal supreme court, the only tribunal in the country which is competent to do it. * * *

It is conceded that, prior to the act of 1860, the plaintiff possessed no such exclusive privilege as at present claimed. The third section of this act, upon its passage, became an amendment of the plaintiff's charter, and having been accepted by plaintiff, it was from that time forward as much a part of the charter as any one of the provisions of the original act. All the provisions of a charter, whether inserted originally or afterwards by amendment with the consent of both contracting parties, constitute the contract. And no rule of law prohibits such a modification of a contract by the parties, or requires any consideration distinct from that originally agreed upon, to render the contract valid, as modified. But even if the test insisted on by defendant's counsel, that the act to be a contract must import or express a present consideration, it will be found, on examination, that it does. By it the city might make such municipal regulations concerning plaintiff's road as public interest or convenience might require, except to reduce the rate of fare. By the act of 1855, the plaintiff had power "to regulate the time and manner in which persons and property should be transported and the compensation to be made therefor." This was a vested right which could not be abridged or impaired. The city ordinances before referred to, assumed to make a very extensive and substantial impairment of this corporate power, but as before stated, they were in this respect *ultra vires* and void.

This right or power, so possessed by plaintiff and guarded by its charter, the plaintiff, by its acceptance of the amendment of 1860, and in consideration of the exclusive privilege therein granted, in an important and substantial measure, relinquished and consented, might be transferred to the city council of St. Louis. * * * I think the proposition clear that the act of 1860 constituted a contract between the state and the plaintiff, and that there is expressed in it, if that were necessary, a consideration for the privilege claimed by the plaintiff, which the legislature deemed sufficient, and which the law deems valuable.

Having reached the conclusion that the act of January 16, 1860, was a contract with plaintiff, and granted the exclusive privilege claimed in express terms, the judge declined to express any opinion as to whether the act of February 15, 1864, or any of the subsequent city charters, operated as a repeal of the act of 1860. For though no repeal has been accomplished, still on this ground alone, the plaintiff is not entitled to the relief asked. To entitle it to an injunction upon such ground, the plaintiff must show that defendant's road is or will be a public nuisance, and that some special damage results or is threatened therefrom to plaintiff, as distinguished from the public generally. But no such case is presented by this record.

The remaining and final question in the case, is whether the defendant's proposed road, on the streets contemplated, will invade or impair the privilege which we have found the plaintiff possesses under its charter; for, if it will, then the remedy by injuction is the appropriate one. It is therefore necessary to ascertain with precision the extent of this exclusive privilege.

The settled rule of construction applied to all grants of franchises or privileges from the state to individuals or private corporations, is, that nothing passes by the grant except what is expressly named or necessarily implied in the terms and language used in the instrument or act evidencing the grant. Such grants cannot be enlarged or extended by implication, but are to be construed strictly and most favorably to the grantor, the state; and, with this rule as a guide, this point must be determined.

After examining the respective routes of the plaintiff's and defendant's roads, the judge proceeds:

Are these respective roads, then, parallel within the meaning of the plaintiff's charter? That charter, as we have seen, declares that no street railroad shall thereafter be constructed in the city of St. Louis, nearer a parallel road than the third parallel street. In other words, unless these roads are parallel roads in the sense in which the word "parallel" is here employed, the plaintiff's complaint of the defendants' proposed action is without foundation. If we are to be governed by the primary and more restricted meaning of the word "parallel," then the charter requires that these roads, to be parallel, must be equally distant at every point throughout their entire length. If, however, we accept the meaning attached to the word as generally applied to the ordinary business affairs of men, and which, as these roads were to be built upon streets of cities, which are rarely, if ever, found strictly parallel, it must be presumed that was the sense it was used in by the legislature, then we understand that these roads must have substantially the same general direction. And this interpretation of the word is as liberal in favor of the plaintiff as the rule of construction before announced will allow. Can it be said, then, that these roads have substantially the same general course or direction?

The distance traveled by the plaintiff's cars in making the round trip within the city limits (for, so far as this question is concerned, we have nothing to do with such portion as lies beyond these limits), is about fourteen miles. When one of plaintiff's cars is at the southern end of its route, it is three miles and a half from the car at the southern terminus of defendant's road, and when it reaches the northern end of its route, it is more than one mile north and east of the west and northern terminus of the defendant's road. Cars running south on these roads are never nearer each other than six blocks, and for the greater part of the way, seven and eight blocks. In running north, however, they are for nine blocks within one block of each other, and to this extent are parallel. But the test is not whether while running one way they are for a given distance parallel; but whether this general course, taking into consideration the relative positions of their respective termini, and the relative positions of the different sections of the city traversed by them, is substantially the same. Otherwise, a road deflecting but one block from an east and west line, and built for the distance of that block on the north and south road, within three blocks of plaintiff's, would encroach upon the exclusive privilege of the plaintiff. Doubtless it was the intention of the legislature to ncrease the value of plaintiff's franchise by preventing the construction of roads which would create substantial and hurtful competition to plaintiff's business throughout the sections of the city traversed by its road; but it was not designed by this to create a monopoly which would suspend the power of the legislature for a period of twenty-five years, the duration of plaintiff's charter, to authorize street-railroad facilities to portions of the city entirely beyond the reach of plaintiff's road, and for that purpose permit railroads to be built nearer plaintiff's road than three blocks, and for such distance as would answer the end sought, and yet avoid the prohibited character of the parallel road. The effect of the defendant's road may, and probably will be, to diminish to a limited extent the receipts of the plaintiff on a comparatively short section of its road, from passengers going one way, but it is not a diminution of its receipts by diverting its through travel along the whole or a great portion of its road, as would be the result of a road parallel to it within the meaning of the plaintiff's charter.

The conclusion reached, therefore, is that the grant to the defendant of the franchise of its proposed road does not impair the obligation of the contract between the state and the plaintiff, evidenced by the act of January 16, 1860. The injunction is accordingly refused, and the plaintiff's bill is dismissed.

A motion for a new trial has been overruled, and the case has been affirmed in general term, *pro forma*. It will go to the October term of the supreme court of the state.

[Communicated.]

Insanity as an Excuse for Crime — The Ohio Statute.

TOLEDO, OHIO, Sept. 28, 1874.

EDITORS CENTRAL LAW JOURNAL:—I notice in the CENTRAL, of the date of Sept. 24, p. 474, you quote from the Daily Register an article on the 7th Edition of Dr. Wharton's book on Criminal Law, in which reference is made

to a bill recently pending in the Ohio Legislature, in reference to cases where a defendant is charged with crime and expects to plead insanity, etc. That bill became a law, a copy of which I herewith inclose. So far as I am aware, there has been but one case disposed of under this law in Ohio, it having become a law of Ohio on the 31st of March last. The case I refer to is that of the State v. Blackburn, who was tried for murder in the first degree, in the Common Pleas Court of Ross County, and convicted of murder in the second degree. The case was taken on error to the supreme court and reversed. 23 Ohio State 146. The case having been remanded, the above law having, in the meantime become a statute of the state, the defendant invoked its aid, and under its provisions was adjudged insane, and is now confined in one of the insane asylums of the state. Very truly yours, A. H. McVEY.

The following is the statute above referred to:

AN ACT

To amend sections fifty-two and fifty-three of an act entitled "An act to provide for the uniform government and better regulation of the lunatic asylums of the state, and the care of idiots and the insane," passed and took effect April 7, 1856. S. & C. 849.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That said section fifty-two of the said act be amended so as to read as follows:

Section 52. (If any person in prison, charged with an offence, whether in needy circumstances or not, shall at any time before indictment is found against him, at the request of any citizen, be brought before an examining court, in the manner provided by the forty-eighth section of the code of criminal procedure, and if it shall be found by the court that such person was an idiot, or was insane when he committed the offence, the said court, at its discretion, shall proceed, and the prisoner shall be dealt with in like manner as other idiots and lunatics are required to be after inquest held.)

SEC. 2. That said section fifty-three of said act be amended so as to read as follows:

Section 53. (If any person in prison shall, after the commission of an offence, and before conviction, become insane, whether he be in needy circumstances or not, and whether indicted or not, an examining court may be called in the manner provided by the forty-eighth section of the code of criminal procedure, and if such court shall find that such person became insane after the commission of the offence of which he stands charged or indicted, and is still insane, the said court shall proceed, and the prisoner shall, for the time being, and until restored to reason, be dealt with in like manner as other lunatics are required to be after inquest had. And in all cases where any person has been indicted for an offense, and his attorney shall suggest to the court in which the indictment is pending, either before or after the plea thereto, that such person is not then sane, and a certificate of a respectable physician to that effect be presented to the court, it shall be the duty of the court to order a jury to be impanneled to try whether the defendant is sane at the time of such impannelling; and thereupon a time for the trial of said question shall be fixed, and a jury shall be drawn from the jury-box to try the same, unless the prosecuting attorney or the defendant's attorney shall demand a struck jury for the trial thereof; the jury shall be sworn or affirmed to well and truly try the question whether the defendant is sane, and a true verdict give according to the law and the evidence. On the trial, the defendant shall hold the affirmative; if the jury agree upon a verdict, or three-fourths of them concur in opinion, their finding shall be returned as the verdict of the jury. A new trial may be granted on the application of the defendant's attorney, for either of the causes for which a new trial may be granted, when there has been a verdict of conviction. If the jury shall find the defendant to be sane, and their verdict be not set aside, a trial shall be had upon the indictment as if the said question had not been tried; if the jury shall find him to be not sane, he shall, for the time being, and until restored to reason, be dealt with in like manner as other lunatics are required to be after inquest held; if the jury, or three-fourths of them, do not agree, or their verdict be set aside, another jury shall be impanneled to try the question; and all statutory provisions and rules of practice relating to criminal causes, which are in their nature applicable to the proceedings and trial by jury herein provided for, as well as to a review thereof on error, shall apply to such proceedings, trial and review; provided, however, that if such lunatic be discharged, the bond given for his support and safe keeping shall also be conditioned that said lunatic shall, when restored to reason, answer to said offence, and abide the order of the court in the premises; and any such lunatic may, when restored to reason, be prosecuted for any offence committed by him previous to such insanity.)

Summary of our Exchanges.

The Albany Law Journal, for October 10, contains an article entitled The Fear of Courts, in which it pays attention to the dread expressed by Miss Catharine Beecher, that her brother would not get justice in the New York courts. Another on the Nature of Property in Trees, examining the following decisions: Warren v. Leland, 2 Barb. 619; Wintermute v. Light, 46 Barb. 278; Foote v. Calvin, 3 Johns. 216; Austin v. Sawyer, 9 Cow. 39; Vorebeck v. Roe, 50 Barb. 302; Goodyear v. Vosburg, 57 Barb. 243. Also another curious article by C. H. T., on the salaries of judges. It reprints from the Solicitor's Journal an article on the Power of a Master of a Ship to Bind the Owner by a Contract for Necessaries; and contains other interesting matter.

The American Law Times and Reports comes to us with several important cases published in full. Among these are Campbell v. Campbell, to appear in 63 Ill., holding that a court of chancery in that state has no jurisdiction over an infant in a proceeding for partition, without service of process upon the infant. Without such service the proceeding is a divestiture of title without due process of law. See upon the same point, Galpin v. Page, *ante*, p. 491.

Tome v. Parkersburg Branch R. R. Co., is an elaborate decision of the Supreme Court of Maryland, opinion by Bowie, J., on the responsibility of a principal for the fraudulent acts of his agent; evidence touching the genuineness of signatures, and the admissions of photograph copies, with explantions by the photographer.

Starr v. Stark, is an important opinion of Mr. Circuit Judge Sawyer, in the United States Circuit Court, District of Oregon, on the doctrine of *res judicata*. We have already noticed this case (*ante*, pp. 446, 447).

The Supervisors of Knox County v. Davis (to appear in 63 Ill.), is an important case in the Supreme Court of Illinois, where a citizen filed a bill in chancery to contest an election which resulted in favor of removing the county seat.

The American Law Register, for October, comes to us with an article by Henry Reed, entitled "Studies in the Law of the Statute of Frauds," in which a great many cases are examined. In addition to its usual abstract of recent decisions, it reports in full the following American cases:

Supreme Court of Errors of Connecticut.—Weed v. Dayton—Debtor and Creditor—Exemption of personal property from execution—Household furniture on storage in anticipation of future use in housekeeping—Boarding house keeper. Opinion by Seymour, C. J. (with note).

City Court of Baltimore, Maryland.—Strasburger v. Burk—Contracts void as against public policy—Furnishing liquors, etc., to voters to procure nomination to public office—Contracts tending to corruption of such nomination equally void as if applied to elections held under authority of law. Opinion by Brown C. J. (with note).

Supreme Court of Ohio.—Union Mutual Ins., Co. v. McMillen—Life insurance policy—Failure of company to comply with insurance laws does not render policy void—Alteration of policy by agent—Unauthorized receipt of premium after policy had become void by failure to pay in proper time—Company not bound unless by ratification with knowledge of the facts. Opinion by White, J.

Court of Appeals of Kentucky.—Graves v. Lebanon Nat. Bank—Cashier's bond—Bank not bound to make formal acceptance of—Sureties liable for default after execution of their bond—Published statements by bank directors—Exoneration of cashier's sureties by reason of false statements published before they executed bonds. Opinion by Lindsay J.

United States Circuit Court, Eastern District of Virginia.—In *re* Deckert—Bankruptcy—Constitutional requirement of uniformity—Amended act of 1873, exempting property void for want of uniformity—Constitution of Virginia—Reconstruction acts. Opinion by Waite, C. J.

United States Circuit Court, District of Louisiana.—United States v. Cruikshank—Constitutional law—Protection of individual rights by the Federal constitution—Power of Congress to make positive laws concerning such rights depends on the nature of the rights—13th, 14th and 15th amendments—Jurisdiction of United States Courts over offences against the colored race—To give such jurisdiction, the offence must be based on a motive of race, color, or condition of servitude, and such motive must be alleged in the indictment—Enforcement act unconstitutional so far as it assumes to regulate the right of voting. Opinion by Bradley, J. (with note).

The Western Insurance Review, for October, contains an editorial by the legal editor, on Avoiding Life Policies on Account of Injurious Habits. It publishes without a syllabus, Howard v. Continental Life Ins. Co., Supreme Court of California, construing the terms of an endowment policy, with regard to the time when the premiums must be paid. It also publishes several abstracts of Insurance cases.

In Samuel A. Coombs, Washington Law Reporter for September 9, the following points are ruled by the Supreme Court of the District of Columbia: A power to sell real estate for the payment of debts and the education of children contained in a will, may be executed by a surviving executor, without reciting such power in the executing deed of conveyance; provided that the intent to execute the power is shown by the circumstances of the case.

By the omission of the usual recitals in a deed that the grantor is a surviving executor, and that it was executed in pursuance of a power, such deed,

though not in an approved form, is not for that reason void.

A tax deed is void where the advertisement of notice of sale contains no dollar-mark at the head of the column of figures.

This last point has been ruled in several other cases.

In Gould's appeal, same court, a crazy fellow endeavored to get an invention patented by which to advertise by captive balloons suspended (if we may use this word) over cities. Imagine a great city like Saint Louis, not only oppressed with its own dirt and smoke, but overshadowed by clouds of tethered balloons, bearing such inscriptions in enormous characters as "S. T 1860. X;" "Children Cry for Pritcher's Castoria;" "The Burgtown Life Insurance Company—Assets $100,000,000." Imagine the balloons of rival sewing machine companies contending for precedence in the sky as their agents contend for precedence on the earth. Why, it would result in transporting to earth that scene in Milton's hell, where "armies rush to battle in the clouds." The court thought the device not patentable. It lacked only one thing—a "fixed and definite organism."

In the case of Kimbro v. First National Bank, same court, same journal for October 6, the following is the syllabus:

Where a draft was issued from the United States Treasury upon the First National Bank of W., which was a depository and financial agent of the government, payable to the order of K., who was a married woman then living in Tennessee, with her husband, and the draft was delivered by the government to the agents of the payee who had been employed to prosecute the claim against the United States, and the draft was cashed by a bank in Nashville, on a forged indorsement of the payee's name, and by it sent for collection to a bank in New York, by whom it was forwarded to the drawee in W., who paid it: *Held*, that such drawee was liable to the payee, although payment had not been demanded on her behalf until after said drawee had paid it, relying upon the indorsement as genuine. *Held*, also, that the liability of the drawee was not released by the circumstance that, on paying the draft, it was transmitted to the treasurer of the United States, who acted upon the indorsement as genuine, and gave full credit for the amount of such draft in the account of the bank. *Held*, further, that the action would lie, notwithstanding the fact that the payee never had possession of the draft, and that it was on file in the treasury department when the demand of payment was made on behalf of said payee, and notwithstanding the fact that defendant, in paying said draft, upon such payee's indorsement, acted as the agent of the United States government.

Where evidence is introduced impeaching the genuineness of the supposed indorsement, it is competent to submit the paper to the jury, to show that it had been issued by the treasury department; and to determine if the endorsement was a forgery.

The acknowledgement of a power of attorney before the clerk of a county court, with the seal of the court affixed, does not raise a presumption of law that the instrument was executed by the person mentioned in the certificate of said clerk. Where there is evidence tending to prove and disprove a valid execution, the question to must be submitted to the jury upon all the facts.

If there is a valid execution of a power of attorney it is a sufficient authority to the attorney to place the name of the payee on the back of the draft, and to receive the money thereon. Or, if the power of attorney was left in the hands of the attorney to be used by him and he filled the blanks therein, and by that means placed the endorsement on the draft, it would be a good and valid utterance of the draft as against the payee, or those claiming under her.

If the husband, during his life time never reduced the draft to his possession, then, upon his death it became absolutely the wife's property by survivorship; and if she has not waived her right thereto, the representative of the husband's estate has no interest in the cause of action.

Where several instructions are refused, but the same points are fully given in other prayers that are allowed, there is no ground for exceptions.

The Supreme Court of the District of Columbia is a good court, and its decisions appear to be reported in this journal with great fullness and fidelity.

The Daily Register, for October 3, publishes an interesting opinion of the New York Court of Appeals, Folger, J. holding, applying and illustrating the familiar principle that a partnership, *quoad* the creditors, exists wherever a person is interested in the profits of a concern specifically, in contradistinction to a stipulated portion of the profits as a compensation for services. The same case is republished in the Albany Law Journal for October 10.

Legal News and Notes.

—AN exchange suggests that if Brigham Young dies the scramble for widows' thirds will drive every judge of probate In Utah to the nearest mad-house

—MR. SNELL, a Washington police justice, has imposed a fine of $100 upon a restaurant keeper of that city, for refusing to serve two colored men, Mr. Langston and Mr. Purvis.

—LETTERS containing mutilated currency addressed to the "Treasurer of the United States, Washington, D. C.," can be registered free of charge, but the postage must be paid in full by stamps.

—MR. DISTRICT JUDGE SHIPMAN has recently decided, that in determining the dutiable value of importations, the franc is to be estimated at 18 6-10 cents. Richard v. Arthur, 20 Int. Rev. Rec. 104.

—ONE of our Missouri correspondents conludes his letter as follows: "The Psalmist said, 'I will meditate in thy statutes; thy law do I love;' and he had not Wagner and the common law. Therefore, with how much reason should we of modern times cleave affectionately to our profession."

—M. D. LEGGETT, commissioner of patents, has resigned. He designs to practice patent law before the United States Circuit and Supreme courts, and in contested cases before the Patent Office. He will establish his office in Cleveland, Ohio. J. M. Thacher, Assistant Commissioner, has been promoted to the vacancy.

—THE value of extradition laws has been again forcibly illustrated by the arrest of two Italians in New York, charged with committing murder eighteen months ago in Sicily. "Flight is almost useless," says one of our exchanges, commenting on this case, "when the whole civilized world becomes the pursurer of the fugitives."

—THE new Ohio Digest, which has been edited by A. H. McVey, Esq., of the Toledo bar, is nearly through the press. It consists of two volumes. Its plan is highly spoken of by Chief Justice Waite, Mr. Justice Cooley, Benj. Vaughn Abbott, and others. Ingraham, Clark & Co., of Cleveland, are the publishers.

—GENERAL BAKER, commissioner of pensions, has issued in pamphlet form all the laws relating to pensions revised and consolidated by the act to revise and consolidate the statutes of the United States in force December 1, 1873. This publication embraces all acts relating to pensions except three minor amendatory acts passed at the last session of Congress.

—THE commissioner of pensions has just published the following important regulation: "In all claims for bounty-land, and for pension on account of service in the war of 1812, the service of the company or organization of which it is alleged the soldier was a member, must appear by record evidence before parol evidence can be accepted to prove the service of an individual member of said company."

—THE attorney-general has decided that under section 2593 of the revised statutes, the secretary of the treasury has power to remit fines, penalties and forfeitures arising under any revenue law when the amount does not exceed $1,000, and when there has been no summons, inquiry, and statement by a judge; and also to remit fines, penalties, and forfeitures arising under laws relating to the negotiating, recording, enrolling, or licensing of vessels when the amount does not exceed $50.

—HON. SYLVANUS WILCOX, judge of the Fourth Judicial Circuit of Illinois has reslsgned, by reason of ill health, brought on by the arduous labors of his office. Judge Wilcox commenced the practice of law at Elgin, in 1846, and continued in the practice up to June, 1867, at which time he was elected circuit judge. He was re-eleeted in June, 1873. His circuit comprised the counties of Dupage, Kane and Kendall, made a large circuit, and required almost his entire time to dispose of the business.

—A FELLOW by the name of Murdock, undertook to levy blackmail upon Hon. Fernando Wood, and has been convicted in a criminal court in Washington City, and will probably have an oportunity to learn an honest trade. His offense consisted in sending the following letter: "Sir: I am satisfied of your guilt. I have one reason for not shooting you. I will settle for $50,000, you to take the woman and keep her. The alternative — I will empty seven chambers of a Colt's revolver into you on the first opportunity. Answer immediately in writing to messenger. S. B. M.

"If you do not comply with these terms I will publish you in all the New York papers and write to your wife. S. B. M."

Mr. Wood deserves the thanks of the country.

—AND now, a man by the name of Case, whose conscience has smitten him for keeping so important a matter a secret so long, has written a letter to some newspaper claiming that when he, Case, was major of the 7th Illinois Cavalry, and Wm. Pitt Kellogg, the present governor of Louisiana, was colonel of the same regiment, Kellogg exhibited to him a check for $500, received from the proper accounting officer of the government, as his, Kellogg's, quarterly salary as chief justice of Nebraska territory, and confessed to him, Case, that he was in the habit of drawing his salary as colonel and chief justice at the same time. We are prepared to believe almost anything of Kellogg, but this story bears, in the language in which it is constructed, indubitable marks of being the invention of a weak brother. It reads too much like Mrs. Tilton's testimony before the Beecher Committee, to be credited by men of sense.